IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 106 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG sd/-

HONOURABLE MR.JUSTICE D.H.WAGHELA sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S.KRISHNA TEXTILES - Applicant(s)
Versus
COMMISSIONER OF INCOME TAX - Respondent(s)

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Appearance :
MR MANISH J SHAH for Applicant(s) : 1,
MR MANISH R BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR JUSTICE R. S. GARG
and
HONOURABLE MR JUSTICE D.H. WAGHELA

Date : 11/10/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench “C”, under section 256 (1) of the Income Tax

Act, 1961, at the instance of the assessee, has referred the following questions to us for our opinion which arise out of Income Tax Appeals No.1835 & 1836/Ahd/1994 relating to Assessment Years 1985-86 and 1986-87:

> *"(1) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Excise Duty collected by the assessee on grey fabrics was in the nature of trading receipts and hence disallowable under section 43B of the Act ?*
>
> *(2) Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the bank guarantee furnished by the assessee which was taken by the assessee by depositing certain amount in bank fixed deposit as margin money did not tantamount to actual payment and so section 43B is applicable ?"*

2. The short facts leading to the present

Reference are that the assessee, a partnership firm derived income from dyeing of art silk cloth on job basis and was also engaged in doing work on its own account. The excise authorities, on the basis of certain notifications and the relevant provisions of Excise Laws, interpreted the relevant provisions in such a way that duty was leviable not only on the job work carried on by the assessee but also on the value of the said cloth belonging to various customers regardless of the fact that the assessee was not the owner of the said cloth. The assessee, as well as various other processors filed various writ petitions in this High Court and the Court decided the point in favour of the assessee and others. In further appeal, the Apex Court granted stay in relation to the recovery of the disputed part of the excise duty which was attributable to the value of cloth belonging to the customers and was brought to the assessee for job work. The assessee was duly paying excise duty to the Government which was relating to the job work but was not paying the amount of duty which was levied on the cloth despite recovering the said excise duty from its customers.

The assessee also obtained certain fixed deposit/bank guarantee in favour of the department in lieu of the excise duty which he had collected from the customers.

3. Hon'ble the Apex Court gave its judgment in favour of the Excise Department, in the matter of ***Ujagar Prints v. Union of India & Ors.*** (1989) 179 ITR 317. Being a binding precedent, the said judgment was made applicable in case of other process houses including the assessee. After the said judgment, the excise authority recovered the disputed sums either in cash or by enforcing bank guarantee.

4. The Assessing Officer, in the process of assessing the income, made various additions in respect of the amounts which were recovered by the assessee towards discharge of excise duty liability and held that the excise duty charged/collected by the assessee from its customers was a trading receipt in view of the judgments of the Supreme Court in the case of ***Chowringhee Sales Bureau P.Ltd. v. CIT (1987 ITR 542)*** and ***Sinclair Murray and Co. P.Ltd. v. Commissioner of Income Tax, Calcutta (1997 ITR 615).***

The said additions were made in view of the provisions of section 43B of the Act. Ultimately, the matters relating to various Assessment Years came up for consideration before the Tribunal which held that the amount received by the assessee towards the Excise Duty would come within the purview of trading receipts. It accordingly held in favour of the department and against the interest of the assessee.

5. The assessee, being aggrieved by the said final order passed by the Tribunal, made an application for Reference. The Reference is accordingly before us.

6. Shri Shah, learned counsel for the applicant-assessee made various submissions including that the order passed by the Tribunal was absolutely unjustified because the amount received by the assessee if ultimately was to be paid to the Excise Department, then it would not be a trading receipt in the hands of the assessee and, in case the amount was to be returned back to the customers, then, again it would not be a trading receipt but would partake the character of a deposit for and on behalf of the

customers.

7. Shri Bhatt, learned counsel for the Revenue, placing reliance upon the above referred two judgments and a judgment delivered by us on 12.9.2006 in ITR No.89 of 1996 in the matter of ***Commissioner of Income Tax v. M/s.Ideal Sheet Metal Stampings & Pressings P.Ltd.*** and yet another judgment of a Division Bench of this Court dated 2.2.2006 delivered in Tax Appeal No.193 of 2003 in the case of ***M/s. Mugat Dyeing & Printing Mills v. A.C.I.T.*** submits that the issue is not *res integra* and from the above referred judgments, it would clearly appear that the amount received by the assessee would be taken to be trading receipts.

8. We have gone through the aforesaid decisions. In the matter of *CIT v. M/s.Ideal Sheet Metal Stampings & Pressings P.Ltd. (supra),* while deciding this very issue in favour of the Revenue, we have already observed that the assessee cannot be allowed to say that as there was a dispute about the liability to some extent, or to an extent absolute,

therefore, on one side, it would recover the tax, keep it with it, and would not pay the same, but, still would be entitled to deduction and section 43-B of the Act would not apply, as the issue has already been decided by us, we must hold that the Tribunal was right and justified in holding against the interest of the assessee. The first question is answered in affirmative in the interest of the Revenue. So far as the second question is concerned, in our earlier judgment we have already held that the bank guarantee furnished by the assessee to the department which was taken by the assessee by deposit of margin money would not amount to actual payment. The question is accordingly answered. The Reference stands disposed of. No costs.

sd/-
[R. S. Garg, J.]

sd/-
[D. H. Waghela, J.]

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